

October 22, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communication: WC Docket Nos. 01-92, 04-36, 05-337, 06-122

Dear Ms. Dortch:

CTIA – The Wireless Association® (“CTIA”) takes this opportunity to underscore the need for fundamental reforms to the universal service and intercarrier compensation systems so that they better reflect consumer choice and the competitive marketplace. Specifically, CTIA supports: (1) Unification of the intercarrier compensation system, with a uniform termination rate no higher than \$0.0007 per minute, as a transition to a bill-and-keep system; (2) Dedicated universal service support for the deployment and maintenance of advanced mobile wireless services in high-cost areas; (3) The establishment of Lifeline and Link Up discounts to enable lower-income individuals to purchase affordable broadband services utilizing the technology of their choice; and (4) A numbers-based universal service contribution system that does not unfairly treat over 44 million wireless prepaid and over 70 million wireless family-plan customers. As the Commission considers how best to implement these changes, CTIA respectfully requests three changes to the draft Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking currently under consideration. Namely, the Commission should:

1. Reduce the proposed transition to unified cost-based rates for traffic termination from ten years, as has been proposed, to five years;
2. Provide a five year transition from support currently provided to competitive eligible telecommunications carriers (“ETCs”) under the identical support rule to any successor mechanism(s); and
3. Seek comment on an appropriate universal service mechanism (or mechanisms) focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas.

These changes, while modest, will significantly increase the consumer benefits of the Commission’s intercarrier compensation and universal service reform efforts.

First, CTIA supports a five year transition to a unified cost-based rate for traffic termination. There is broad agreement in the record that unification of the intercarrier compensation system is long overdue. Parties agree that the current disparate intercarrier compensation system severely distorts the competitive marketplace and undermines the efficient deployment of next generation voice, data, and video services delivered over

broadband capable facilities.¹ According to the Commission, “a regulatory scheme based on these distinctions is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition. Additional problems with the existing intercarrier compensation regimes result from changes in the way network costs are incurred today and how market developments affect carrier incentives. These developments and others . . . confirm the urgent need to reform the current intercarrier compensation rules.”² The transition to a unified intercarrier compensation system, therefore, should not take another decade to achieve. Instead, CTIA supports a more reasonable five year transition period, which will provide state commissions, as well as impacted carriers and customers more than sufficient time to transition to a modified compensation structure.

Second, CTIA supports the same five year transition period for changes to the high-cost support available to competitive ETCs. The Federal-State Joint Board on Universal service (“Joint Board”) suggested such a transition period in its Recommended Decision on high-cost universal service reform.³ Over a specified period of time, the Joint Board envisioned that wireless ETCs would transition from existing funding sources to a successor Mobility Fund.⁴ Wireless ETCs have now invested billions of dollars to deploy wireless facilities in rural and high-cost areas with the expectation that high-cost support will be available to help defray both the initial deployment and ongoing maintenance and operations costs of these networks. Indeed, under the FCC’s ETC designation guidelines, the FCC and many states require wireless ETCs to submit and comply with five year build out plans. As the FCC has stated, failure to comply with these build out commitments could result in revocation of an ETC’s designation. In the wireline context, the Commission has provided reasonable transition periods for any significant changes in high-cost support amounts. Wireless ETCs, too, should be provided a reasonable transition period. To this end, CTIA supports a five-year period during which wireless carriers are transitioned off of the existing support mechanisms and onto any successor mechanisms.⁵

Third, the Commission should shelve the interim wireless “actual cost” mechanism under consideration and seek comment on a more appropriate high-cost mechanism (or

¹ See Letter from AT&T, CompTIA, CTIA, Global Crossing, ITIC, NAM, New Global Telecom, PointOne, Sprint Nextel Corp., TIA, T-Mobile, Verizon, and the VON Coalition to Chairman Martin, Commissioner Copps, Commissioner McDowell, Commissioner Adelstein, and Commissioner Tate, FCC, CC Docket No. 01-92 (filed Aug. 6, 2008). See also, e.g., Comments of National Cable & Telecommunications Association, WC Docket No. 08-160, CC Docket No. 01-92 (Aug. 26, 2008) at 2 (“NCTA consistently has supported rational reform of the intercarrier compensation regime.”); Comments of the National Association of State Utility Consumer Advocates to Refresh the Record, CC Docket No. 01-92 (July 7, 2008) at 7 (“NASUCA agrees that the current regime of widely varying rates for the same functionality depending on the type of call and the carriers involved creates opportunities for abuse and arbitrage, and cannot be sustained in the long run. NASUCA therefore also agrees that reform is needed.”); Comments of The Rural Alliance, CC Docket No. 01-92 (June 27, 2008) at 7 (“If the Commission believes that the Missoula Plan cannot be adopted at this time, then the Commission should consider simplified, yet still comprehensive intercarrier compensation reform.”).

² *In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685 at para. 3 (rel. Mar. 3, 2005).

³ See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4, paras. 27-28 (rel. Nov. 20, 2007) (“*Recommended Decision*”).

⁴ *Id.* at para. 28.

⁵ *Id.* at para. 27.

mechanisms) to permanently replace the identical support rule (if eliminated). Such a mechanism should provide dedicated universal service support for the deployment and maintenance of advanced mobile wireless services in high-cost areas. Initial comments in this proceeding presented extensive data demonstrating that technology and the marketplace have changed in fundamental ways since the current universal service mechanisms were adopted in 1997.⁶ These data show that consumers today primarily value mobility and broadband.⁷ As Verizon recently observed, an increasing percentage of U.S. households rely exclusively or almost exclusively on their mobile wireless services for their network connectivity and growth in wireless-only households is accelerating (especially in light of a challenging economic outlook).⁸ The marketplace developments demonstrate that any universal service policies must, consistent with section 254 of the Act, ensure that wireless carriers have competitively- and technologically-neutral access to high-cost funding. Section 254 of Act also demands that such support mechanisms provide “specific, predictable, and sufficient” support that ensures consumers in high-cost rural areas have access to mobile wireless services that are “comparable” to those available in urban areas.⁹

The initial comments in this proceeding reveal a striking level of acknowledgement that mobility and broadband are the services that consumers are demanding today. Even many rural incumbent local exchange carrier (“rural ILEC”) interests acknowledge the very strong consumer demand for broadband and mobility and the need to fund these services, which should be, but are not yet, ubiquitously available.¹⁰ State public utility commissions and NASUCA also point out their constituent citizens’ needs for broadband and mobility.¹¹ The Commission’s reform efforts must be fundamentally driven by the need to ensure ubiquitous availability of mobile and broadband services. In light of these fundamental marketplace and technological realities, it is unsurprising that there is significant support in the record for the Joint Board’s proposal to set aside universal service funding for areas where it is not economical to provide mobile wireless and broadband services absent support.¹²

⁶ CTIA comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 2-11.

⁷ *Id.* at 10.

⁸ See Letter and Brief from Verizon and Verizon Wireless, in CC Docket No. 01-92, WC Docket Nos. 04-36, 06-122, at 6-7 (filed Sep. 19, 2008). See also Simon Flannery et al., *Telecom Services, Cutting the Cord: Voice First Broadband Close Behind*, Morgan Stanley Research (Oct. 1, 2008).

⁹ See 47 U.S.C. § 254(b).

¹⁰ See, e.g., ITTA comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 8-9; KRITC comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 4-7; Montana Independent comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 17; OPASTCO comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 22; WTA comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 5-9, 22-23. See also USTelecom comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 24, 34; Rural Tel. Finance Coop. comments in WC Docket No. 05-337 (filed Apr. 15, 2008), at 3.

¹¹ See, e.g., Connecticut comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 5; Oklahoma comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 17; NASUCA comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 21-22.

¹² See, e.g., OPASTCO comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 21-22; NASUCA comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 11-13; WTA comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 3; TIA comments in WC Docket No. 05-337 (filed Apr. 16, 2008), at 1-2; CoBank comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 4-5; Connecticut DPUC comments in WC Docket No. 05-337 (filed Apr. 17, 2008), at 4-5.

Unfortunately, while the Commission appears ready to set aside between \$3 and \$4 billion annually for the extension of ILEC broadband networks, as a practical matter, no funding is being set aside for the extension of mobile wireless broadband networks. The Commission is now considering a mechanism to determine support for wireless ETCs that is not focused on making sure that wireless services are ubiquitously available, but rather is inexplicably intended to eliminate almost all universal service support for wireless carriers. Contrary to the FCC's tentative conclusion in the *Identical Support Rule NPRM*, the wireless ETC "actual cost" formula currently under consideration is neither based on wireless carriers' actual costs nor is it designed to direct appropriate amounts of high-cost support where it is needed. Rejecting another tentative conclusion, the Commission is considering a proposal to exclude spectrum costs from a wireless carriers' actual cost calculation.¹³ Spectrum costs should be included in any determination of a wireless carrier's actual costs. Spectrum is a considerable cost of doing business for wireless carriers, akin to a LEC's loop costs.¹⁴ As evidenced by the recent Advanced Wireless Services and 700 MHz auctions, wireless carriers are making considerable investments in spectrum assets in order to deploy the next generation, higher-bandwidth mobile wireless broadband services increasingly demanded by consumers. Just as it would be inappropriate to exclude a LEC's loop costs from determination of its costs, it is inappropriate to excluded wireless carriers' spectrum costs.

It is also our understanding that the draft order inexplicably would divide a *wireless ETC's* costs by the relevant *incumbent LEC's* switched access lines to arrive at the *wireless ETC's* average costs. Such a formula – which defies common sense – should instead divide a wireless ETC's costs by its number of subscribers residing in the relevant incumbent LEC's service area to arrive at a truer estimation of a wireless ETC's average costs.

Having determined a wireless ETC's average costs and comparing those costs to the relevant rural or non-rural incumbent LEC cost benchmark (strangely, instead of a wireless cost benchmark), the wireless ETC would still only qualify for the same support it currently receives under the "interim" CETC cap. In other words, the high-cost wireless ETC would receive no more support than it received under the cap, a result that in no way would reflect "actual costs." Further, those high-cost rural areas that do not currently qualify for support under the "interim" cap would remain unsupported.

The proposed "actual cost" formula would continue to penalize those rural consumers without access to mobile wireless services where they live or where they travel.¹⁵ As CTIA noted in its comments, roughly 23.2 million U.S. residents currently lack broadband-capable wireless service at their primary place of residence, and more than 2.5 million miles of roads are not covered by a broadband-capable wireless signal (amounting to 42% of the road miles in the United States). A recently study conducted by CostQuest Associates estimates the total cost of completing the initial effort to construct a dual-mode 3G (Evolution Data

¹³ See *High-Cost Universal Support: Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) ("*Identical Support Rule NPRM*") at para. 17.

¹⁴ If the Commission excludes spectrum costs, it should in fairness and consistent with competitive and technology neutrality principles exclude loop costs in ILEC support calculations.

¹⁵ See CTIA Comments in WC Docket No. 05-337 and CC Docket No. 96-45 and accompanying study by CostQuest Associates, filed April 17, 2008.

Optimized (“EvDO”) and High-Speed Downlink Packet Access (“HSDPA”)) broadband-capable network in these areas at approximately \$22 billion. This estimate does not include the substantial costs of operating, maintaining, and upgrading those same networks. The mechanism for determining CETC support that is currently under consideration by the Commission would not address these challenges.

Instead of pursuing another “illusory bandaid” mechanism such as is currently under consideration,¹⁶ at the outset of a five year transition period, the Commission should seek comment on and develop a successor universal service mechanism(s) specifically designed to ensure the deployment and maintenance of advanced mobile wireless services in high-cost areas. As part of that proceeding, CTIA respectfully requests that the Commission give serious consideration to the establishment of two mechanisms: (1) One grant-based mechanism focused on extending advanced mobile wireless networks to underserved areas; and (2) One mechanism focused on ensuring that advanced mobile wireless services are maintained in objectively identified high-cost rural areas. Both mechanisms could determine support amounts, if any, based on objectively verifiable measures of actual cost. CTIA welcomes the opportunity to discuss these proposed changes with the Commission and any other interested parties.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Paul W. Garnett

Paul W. Garnett

Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Daniel Gonzalez
Amy Bender
Scott Deutchman
Scott Bergmann
Greg Orlando
Nicholas Alexander
Dana Shaffer
Donald Stockdale
Al Lewis
Jeremy Marcus

¹⁶ See Dissenting Statement of Commissioner Michael J. Copps to the CETC Cap Order issued April 29, 2008.

APPENDIX E

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. Today, the Commission adopts a Further Notice on possible steps for the implementation of universal service and intercarrier compensation comprehensive reform. We believe it is best to leave the following topics to a Further Notice to help ensure the development of a reasoned and complete record on the issues.

3. Specifically, the Commission seeks comment on the appropriate, applicable cost standard under section 252(d)(2) of the Act. We seek comment on whether comprehensive reform for intercarrier compensation should apply to providers operating in Alaska, Hawaii, or any U.S. Territory or possession. Additionally, we seek comment on how carriers' current rates should be transitioned to a new intercarrier compensation regime. Also, we seek comment on whether the Commission should set any conditions on the reciprocal compensation rates set by states. Should any transitional rates apply to VoIP traffic?

4. We also seek comment on the appropriate default rules regarding where a carriers' "network edge" should be following any transition. The Further Notice also seeks comment on whether the reciprocal compensation rates between carriers should be symmetrical without exception and regardless of whether traffic exchanged between the carriers is balanced or not. In addition, we seek comment on the appropriate guidelines regarding the application of section 251(f)(2) of the Act.

5. We seek comment on the appropriate treatment of existing agreements between parties. We also seek comment on various revenue recovery opportunities for carriers and possible supplemental universal service recovery support that would be available where necessary. Should the Commission also require carriers to file an annual report showing how any net access savings are allocated? We also seek comment on whether or not the Commission should enlist the aid of the Separations Joint Board on possible changes to end-user charges.

6. The Further Notice also seeks comment on measures to ensure the ability of carriers to receive the appropriate compensation for traffic terminated on their networks. We also seek comment on an interim solution to the "access stimulation" arbitrage problem. Additionally, we seek comment on whether originating access charges are inconsistent with comprehensive reform and the appropriate transition for the elimination of originating access. We also seek comment on whether or not any comprehensive reform warrants the adoption of rules or

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

guidelines governing the terms and conditions of transit service.

7. We also seek comment on how best to reform the distribution of high-cost universal service support. Specifically, we seek comment on ways to control the growth of the high-cost fund, including whether it is necessary to cap high-cost universal service support to fulfill our statutory obligation to create a specific, predictable, and sufficient universal service mechanism. We seek comment on how any such caps should be implemented. We seek comment on whether we should condition receipt of high-cost support on an eligible telecommunications carrier's (ETC) commitment to provide broadband Internet access service throughout its service area. We seek comment on the use of reverse auctions as a method for disbursing high-cost support, either to areas where an incumbent LEC does not commit to provide broadband Internet access service, or for the distribution of high-cost support to all ETCs. We seek comment on eliminating the identical support rule for competitive ETCs, and on whether competitive ETC support should be based on their own costs or disbursed via reverse auctions.

8. We seek comment on whether to adopt a pilot program to provide universal service support to low-income consumers for broadband Internet access service. Should low-income consumers receive support under the pilot program for discounts on broadband Internet access service and devices necessary to access such services? What implementation and reporting requirements associated with such a pilot program should the Commission adopt?

9. We also seek comment on reforming the universal service contribution assessment methodology. Specifically, we seek comment on whether to adopt a contribution mechanism of \$1.00 per residential telephone number, and move to a connections and/or numbers-based contribution mechanism for business services; or whether to adopt a contribution mechanism of \$0.85 per telephone number for all numbers, and a connections-based contribution mechanism for business services of \$5.00 per connection up to 64 kbps and \$35.00 per connection over 64 kbps. We seek comment on what numbers should be assessable under a numbers-based contribution mechanism. We also seek comment on how to treat wireless prepaid plans, on exceptions to the contribution obligations, on reporting and recordkeeping requirements, and on a transition to the new contribution methodology.

10. Finally, we seek comment on what revisions to our rules are needed to implement comprehensive reform. For example, what changes, if any, are needed to the rules contained in Parts 51, 54, 61, and 69?

B. Legal Basis

11. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1-4, 201-209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503 of the Communications Act of 1934, as amended, and Sections 601 and 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151-154, 157 nt, 201-209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503 and sections 1.1, 1.411-1.429 and 1.1200-1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411-1.429 and 1.1200-1.1216.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

⁴ See 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁶ A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.⁷

13. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁸ According to Census Bureau data for 2002, there were 2,432 firms in this category, total, that operated for the entire year.⁹ Of this total, 2,395 firms had employment of 999 or fewer employees, and an additional 37 firms had employment of 1,000 employees or more.¹⁰ Thus, under this size standard, the majority of firms can be considered small.

14. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹¹ According to Commission data, 1,311 carriers reported that they were incumbent local exchange service providers.¹² Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.¹³ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Further Notice.

15. **Incumbent Local Exchange Carriers (incumbent LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁴ According to Commission data, 1,311 carriers reported that they were engaged in the provision of local exchange services.¹⁵ Of these 1,307 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.¹⁶ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules

⁵ See 5 U.S.C. § 601(6).

⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁷ See 15 U.S.C. § 632.

⁸ 13 C.F.R. § 121.201, U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” North American Industry Classification System (NAICS) code 517110.

⁹ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁰ See *id.*

¹¹ 13 C.F.R. § 121.201, NAICS code 517110.

¹² See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Aug. 2008) (*Trends in Telephone Service*).

¹³ See *id.*

¹⁴ See 13 C.F.R. § 121.201, NAICS code 517110.

¹⁵ See *Trends in Telephone Service* at Table 5.3.

¹⁶ See *id.*

adopted pursuant to the Further Notice.

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

17. **Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁹ According to Commission data, 1,005 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.²⁰ Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees.²¹ In addition, 16 carriers have reported that they are Shared-Tenant Service Providers, and all 16 are estimated to have 1,500 or fewer employees.²² In addition, 89 carriers have reported that they are Other Local Service Providers.²³ Of the 89, all 89 have 1,500 or fewer employees and none has more than 1,500 employees.²⁴ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

18. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ According to Commission data, 300 companies reported that their primary telecommunications service activity was the provision of interexchange services.²⁶ Of these 300 companies, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees.²⁷ Consequently, the Commission estimates that the majority of

¹⁷ 5 U.S.C. § 601(3).

¹⁸ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

¹⁹ See 13 C.F.R. § 121.201, NAICS code 517110.

²⁰ See *Trends in Telephone Service* at Table 5.3.

²¹ See *id.*

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See 13 C.F.R. § 121.201, NAICS code 517110.

²⁶ See *Trends in Telephone Service* at Table 5.3.

²⁷ See *id.*

interexchange service providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

19. **Operator Service Providers (OSPs).** Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data, 28 carriers have reported that they are engaged in the provision of operator services.²⁹ Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees.³⁰ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Further Notice.

20. **Payphone Service Providers (PSPs).** Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³¹ According to Commission data, 526 carriers have reported that they are engaged in the provision of payphone services.³² Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees.³³ Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

21. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴ According to Commission data, 88 carriers have reported that they are engaged in the provision of prepaid calling cards.³⁵ Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees.³⁶ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

22. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services.³⁸ Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees.³⁹ Consequently, the Commission estimates that the majority of

²⁸ See 13 C.F.R. § 121.201, NAICS code 517110.

²⁹ See *Trends in Telephone Service* at Table 5.3.

³⁰ See *id.*

³¹ See 13 C.F.R. § 121.201, NAICS code 517110.

³² See *Trends in Telephone Service* at Table 5.3.

³³ See *id.*

³⁴ See 13 C.F.R. § 121.201, NAICS code 517911.

³⁵ See *Trends in Telephone Service* at Table 5.3.

³⁶ See *id.*

³⁷ See 13 C.F.R. § 121.201, NAICS code 517911.

³⁸ See *Trends in Telephone Service* at Table 5.3.

³⁹ See *id.*

local resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

23. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁰ According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services.⁴¹ Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees.⁴² Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

24. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴³ According to Commission data, 91 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁴⁴ Of these 91 companies, an estimated 88 have 1,500 or fewer employees and three have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Further Notice.

25. **800 and 800-Like Service Subscribers.**⁴⁶ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁷ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁴⁸ According to our data, at the beginning of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116.⁴⁹ We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers; and 7,029,166 or fewer small entity 866 subscribers.

1. Wireless Carriers and Service Providers

26. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily

⁴⁰ See 13 C.F.R. § 121.201, NAICS code 517911.

⁴¹ See *Trends in Telephone Service* at Table 5.3.

⁴² See *id.*

⁴³ See 13 C.F.R. § 121.201, NAICS code 517110.

⁴⁴ See *Trends in Telephone Service* at Table 5.3.

⁴⁵ See *id.*

⁴⁶ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁴⁷ See 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁸ See *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

⁴⁹ See *id.*

represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

27. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.⁵⁰ Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of Paging and Cellular and Other Wireless Telecommunications.⁵¹ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁵² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵³ For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁵⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁵⁵ Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. According to Commission data, 434 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.⁵⁶ We have estimated that 222 of these are small, under the SBA small business size standard.⁵⁷ Thus, under this category and size standard, approximately half of firms can be considered small.

28. **Broadband Personal Communications Service.** The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁵⁸ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁵⁹ These standards defining “small entity” in the context of broadband

⁵⁰ See 13 C.F.R. § 121.201, NAICS code 517210. 2007 Census data are not yet available.

⁵¹ See 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

⁵² See 13 C.F.R. § 121.201, NAICS code 517211.

⁵³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1,000 employees or more.”

⁵⁴ See 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁵ See *id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1,000 employees or more.”

⁵⁶ See *Trends in Telephone Service* at Table 5.3.

⁵⁷ See *id.*

⁵⁸ See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

⁵⁹ See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(2).

PCS auctions have been approved by the SBA.⁶⁰ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁶¹ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

29. **Narrowband Personal Communications Services.** To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁶² A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.⁶³ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s rules.⁶⁴ The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

30. **Paging (Private and Common Carrier).** The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.⁶⁵ In addition, in the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as

⁶⁰ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

⁶¹ See FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

⁶² See generally *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

⁶³ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

⁶⁴ See 47 C.F.R. § 24.321(a).

⁶⁵ See 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

bidding credits and installment payments.⁶⁶ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁶⁷ The SBA has approved these small business size standards.⁶⁸ According to Commission data, 281 carriers have reported that they are engaged in Paging or Messaging Service.⁶⁹ Of these, an estimated 279 have 1,500 or fewer employees, and two have more than 1,500 employees.⁷⁰ Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

31. **Wireless Telephony.** Wireless telephony includes cellular, PCS, and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications services.⁷¹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁷² According to Commission data, 434 carriers reported that they were engaged in the provision of wireless telephony.⁷³ We have estimated that 222 of these are small under the SBA small business size standard.⁷⁴

32. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Cellular and Other Wireless Telecommunications companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.⁷⁵ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Further Notice.

33. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I

⁶⁶ See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

⁶⁷ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

⁶⁸ See *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*).

⁶⁹ See *Trends in Telephone Service* at Table 5.3.

⁷⁰ See *id.*

⁷¹ See 13 C.F.R. § 121.201, NAICS code 517212. (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517201.).

⁷² See *id.*

⁷³ See *Trends in Telephone Service* at Table 5.3.

⁷⁴ See *id.*

⁷⁵ See 13 C.F.R. § 121.201, NAICS code 517212.

and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷⁶ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁷⁷ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.⁷⁸ The SBA has approved these small business size standards.⁷⁹ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁸⁰ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁸¹

34. **800 MHz and 900 MHz Specialized Mobile Radio Licenses.** The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.⁸² These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

35. **700 MHz Guard Band Licensees.** In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁸³ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁸⁴ Additionally, a “very small business”

⁷⁶ See *220 MHz Third Report and Order*, 12 FCC Rcd at 11068–70, at paras. 291–95.

⁷⁷ See *id.* at 11068–69, para. 291.

⁷⁸ See *id.* at 11068–70, paras. 291–95.

⁷⁹ See Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

⁸⁰ See *Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

⁸¹ See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

⁸² See 47 C.F.R. § 90.814(b).

⁸³ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*700 MHz Guard Band Order*).

⁸⁴ See *id.* at 5343–45 paras. 106–10.

is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁸⁵ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁸⁶ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁸⁷

36. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁸⁸ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).⁸⁹ The Commission uses the SBA's small business size standard applicable to Cellular and Other Wireless Telecommunications, *i.e.*, an entity employing no more than 1,500 persons.⁹⁰ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

37. **Air-Ground Radiotelephone Service.** The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.⁹¹ We will use SBA's small business size standard applicable to Cellular and Other Wireless Telecommunications, *i.e.*, an entity employing no more than 1,500 persons.⁹² There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Further Notice.

38. **Aviation and Marine Radio Services.** Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Cellular and Other Telecommunications, which is 1,500 or fewer employees.⁹³ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit)

⁸⁵ *See id.*

⁸⁶ *See 700 MHz Guard Band Auction Closes*, Public Notice, 15 FCC Rcd 18026 (2000).

⁸⁷ *See 700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

⁸⁸ *See* 47 C.F.R. § 22.99.

⁸⁹ *See* 47 C.F.R. §§ 22.757, 22.759.

⁹⁰ *See* 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

⁹¹ *See* 47 C.F.R. § 22.99.

⁹² *See* 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

⁹³ *See* 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars.⁹⁴ In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.⁹⁵ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Further Notice.

39. **Fixed Microwave Services.** Fixed microwave services include common carrier,⁹⁶ private operational-fixed,⁹⁷ and broadcast auxiliary radio services.⁹⁸ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Cellular and Other Telecommunications, which is 1,500 or fewer employees.⁹⁹ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

40. **Offshore Radiotelephone Service.** This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁰⁰ There are approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for Cellular and Other Wireless Telecommunications services.¹⁰¹ Under that SBA small business size

⁹⁴ See generally *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

⁹⁵ See *id.*

⁹⁶ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

⁹⁷ Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

⁹⁸ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

⁹⁹ See 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

¹⁰⁰ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001–1037.

¹⁰¹ See 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

standard, a business is small if it has 1,500 or fewer employees.¹⁰²

41. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.¹⁰³ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity. We conclude that the number of geographic area WCS licenses affected by this analysis includes these eight entities.

42. **39 GHz Service.** The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹⁰⁴ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰⁵ The SBA has approved these small business size standards.¹⁰⁶ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Further Notice.

43. **Wireless Cable Systems.** Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (BRS), formerly Multipoint Distribution Service (MDS),¹⁰⁷ and the Educational Broadband Service (EBS), formerly Instructional Television Fixed Service (ITFS),¹⁰⁸ to transmit video programming and provide broadband services to residential subscribers.¹⁰⁹ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.¹¹⁰ We estimate that the number of wireless cable subscribers is

¹⁰² See *id.*

¹⁰³ See 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

¹⁰⁴ See *Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661–64, paras. 149–151 (1997).

¹⁰⁵ See *id.*

¹⁰⁶ See Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

¹⁰⁷ MDS, also known as Multichannel Multipoint Distribution Service (MMDS) has been renamed the Broadband Radio Service (BRS) and is regulated by Part 27 of the Commission’s rules; see 47 C.F.R. Part 27, subpart M. See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket Nos. 03-66, 03-67, 02-68, 00-230, MM Docket No. 97-217, RM-10586, RM-9718, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*MDS/ITFS Order*).

¹⁰⁸ ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see generally, *MDS/ITFS Order*, 19 FCC Rcd 14165 (2004). EBS systems are regulated by Part 76 of the Commission’s rules; see 47 C.F.R. Part 76.

¹⁰⁹ See generally *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Notice of Inquiry, 21 FCC Rcd 12229, 12253, para. 71 (2006) (in which the Commission seeks industry comment on new uses of traditional cable systems).

¹¹⁰ See *id.*

approximately 100,000, as of March 2005. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹¹¹ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.¹¹²

44. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,¹¹³ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹¹⁴ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed small business status. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.¹¹⁵ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution.¹¹⁶ Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules that may be affected by rules adopted pursuant to the Further Notice.

45. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).¹¹⁷ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities that may be affected by rules adopted pursuant to the Further Notice.

46. In the 1998 and 1999 LMDS auctions,¹¹⁸ the Commission defined a small business as an

¹¹¹ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997) (*LMDS Order*).

¹¹² See 13 C.F.R. § 121.201, NAICS code 517510.

¹¹³ MDS Auction No. 6 began on Nov. 13, 1995, and closed on Mar. 28, 1996 (67 bidders won 493 licenses).

¹¹⁴ See *generally Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131, Report and Order, 10 FCC Rcd 9589 (1995).

¹¹⁵ Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934. See 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

¹¹⁶ See 13 C.F.R. § 121.201, NAICS code 517510.

¹¹⁷ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). See 5 U.S.C. §§ 601(4)–(6). We do not collect annual revenue data on ITFS (now EBS) licensees.

¹¹⁸ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on Feb. 18, 1998, and closed on Mar. 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on Apr. 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.¹¹⁹ Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.¹²⁰ These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.¹²¹ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

47. **218-219 MHz Service.** The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹²² In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹²³ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹²⁴ These size standards will be used in future auctions of 218-219 MHz spectrum.

48. **24 GHz – Incumbent Licensees.** This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.¹²⁵ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹²⁶ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

49. **24 GHz – Future Licensees.** With respect to new applicants in the 24 GHz band, the

¹¹⁹ See generally *LMDS Order*, 12 FCC Rcd 12545 (1997).

¹²⁰ See *id.*

¹²¹ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (Jan. 6, 1998).

¹²² See generally *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹²³ See generally *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

¹²⁴ See *id.*

¹²⁵ See 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

¹²⁶ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹²⁷ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹²⁸ The SBA has approved these small business size standards.¹²⁹ These size standards will apply to a future 24 GHz license auction, if held.

2. Satellite Service Providers

50. **Satellite Telecommunications.** Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.¹³⁰ The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both prior categories, such a business was considered small if it had, as now, \$15 million or less in average annual receipts.¹³¹

51. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹³² For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.¹³³ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.¹³⁴ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Further Notice.

52. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”¹³⁵ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for

¹²⁷ See *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); see also 47 C.F.R. § 101.538(a)(2).

¹²⁸ See *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); see also 47 C.F.R. § 101.538(a)(1).

¹²⁹ See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

¹³⁰ See 13 C.F.R. § 121.201, NAICS code 517410.

¹³¹ See 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

¹³² U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹³³ See 13 C.F.R. § 121.201, NAICS code 517410.

¹³⁴ See *id.* An additional 38 firms had annual receipts of \$25 million or more.

¹³⁵ U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

the entire year.¹³⁶ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.¹³⁷ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

3. Cable and OVS Operators

53. In 2007, the SBA recognized new census categories for small cable entities.¹³⁸ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

54. **Cable and Other Program Distribution.** The Census Bureau defines this category as “third-party distribution systems for broadcast programming. . . . [that] deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. . . . [and] do not generally originate programming material.”¹³⁹ The SBA has developed a small business size standard for Cable and Other Program Distribution, of firms having \$13.5 million or less in annual receipts.¹⁴⁰ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹⁴¹ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁴² Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Further Notice.

55. **Cable Companies and Systems.** The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.¹⁴³ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁴⁴ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁴⁵ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.¹⁴⁶ Thus, under this second size standard,

¹³⁶ See 13 C.F.R. § 121.201, NAICS code 517910.

¹³⁷ See *id.* An additional 14 firms had annual receipts of \$25 million or more.

¹³⁸ See 13 C.F.R. § 121.201.

¹³⁹ U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁴⁰ See 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

¹⁴¹ See *id.*

¹⁴² *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁴³ See 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 at para. 28 (1995).

¹⁴⁴ These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁴⁵ See 47 C.F.R. § 76.901(c).

¹⁴⁶ WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

most cable systems are small and may be affected by rules adopted pursuant to the Further Notice.

56. **Cable System Operators.** The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁴⁷ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁴⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹⁴⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁵⁰ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

57. **Open Video Services.** Open Video Service (OVS) systems provide subscription services.¹⁵¹ As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.¹⁵² This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.¹⁵³ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by rules adopted pursuant to the Further Notice.

4. Internet Service Providers, Web Portals and Other Information Services

58. In 2007, the SBA recognized two new small business, economic census categories: (1) Internet Publishing and Broadcasting and Web Search Portals¹⁵⁴ and; (2) All Other Information Services.¹⁵⁵ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

59. **Internet Service Providers.** The SBA has developed a small business size standard for

¹⁴⁷ 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn.1–3.

¹⁴⁸ 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

¹⁴⁹ These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁵⁰ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules.

¹⁵¹ *See* 47 U.S.C. § 573.

¹⁵² *See* 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

¹⁵³ *See* <http://www.fcc.gov/mb/ovs/csovsr.html> (current as of Feb. 2007).

¹⁵⁴ *See* 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

¹⁵⁵ *See* 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”¹⁵⁶ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹⁵⁷ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹⁵⁸ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Further Notice.

60. **Web Search Portals.** Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format.”¹⁵⁹ The SBA has developed a small business size standard for this category of \$6.5 million or less in average annual receipts.¹⁶⁰ According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.¹⁶¹ Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Further Notice.

61. **Data Processing, Hosting, and Related Services.** Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”¹⁶² The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.¹⁶³ According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.¹⁶⁴ Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Further Notice.

62. **All Other Information Services.** The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹⁶⁵ Our action pertains to interconnected VoIP services, which could be provided

¹⁵⁶ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁵⁷ See 13 C.F.R. § 121.201, NAICS code 518111.

¹⁵⁸ See 13 C.F.R. § 121.201, NAICS code 518111.

¹⁵⁹ U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁶⁰ See 13 C.F.R. § 121.201, NAICS code 518112.

¹⁶¹ See 13 C.F.R. § 121.201, NAICS code 518112.

¹⁶² U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁶³ See 13 C.F.R. § 121.201, NAICS code 518210.

¹⁶⁴ See 13 C.F.R. § 121.201, NAICS code 518210.

¹⁶⁵ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹⁶⁶ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹⁶⁷ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

63. **Internet Publishing and Broadcasting.** The Census Bureau defines this industry as “establishments engaged in publishing and/or broadcasting content on the Internet exclusively. . . . [that . . .] do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”¹⁶⁸ The SBA has developed a small business size standard for this Census category; that size standard is 500 or fewer employees.¹⁶⁹ According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.¹⁷⁰ Of these, 1,351 had employment of 499 or fewer employees, and 11 firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

64. In the Further Notice, the Commission seeks comment on issues that must be addressed to comprehensively reform intercarrier compensation. These issues include the Commission’s jurisdiction to adopt such reform, how relevant statutory provisions should be interpreted and applied, and if and how carriers should be allowed to recover revenues that might be reduced by any intercarrier compensation reforms. In addition, the Commission seeks comment on the transition to the elimination of originating access. Compliance with a transition away from originating access charges will apply to all carriers but may prove financially burdensome to some small entities and may include new or reduced administrative processes.

65. The Commission currently does not regulate the provision of transit service between carriers and many carriers have entered into agreements governing the provision of transit traffic. Rules imposing transit service obligations will likely have no significant impact on carriers already providing, or carriers already using, transit service. For carriers that would be affected, the burdens may include determining the price of transit service purchased and/or provided, and developing additional administrative capabilities to account for providing and/or receiving transit service.

66. In this Further Notice the Commission also seeks comment on whether carriers will be able to receive universal service support to recover net reduced revenues from intercarrier compensation as a result of reforms that could be adopted. To allow rate-of-return carriers to receive universal service support in this manner, we may need to modify existing rules. For carriers that may be affected, burdens may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive such universal service support. Additionally, these carriers may need to modify some administrative processes in order to comply with any new or revised rules the Commission adopts as a result of the Further Notice.

¹⁶⁶ See 13 C.F.R. § 121.201, NAICS code 519190.

¹⁶⁷ See 13 C.F.R. § 121.201, NAICS code 519190.

¹⁶⁸ U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

¹⁶⁹ See 13 C.F.R. § 121.201, NAICS code 516110.

¹⁷⁰ See 13 C.F.R. § 121.201, NAICS code 516110.